

REMARKS

This amendment is presented pursuant to a Request for Continuing Examination filed concurrently herewith.

The original application was finally rejected in an Office Action mailed October 8, 2004. Applicant proposed an amendment after final which was mailed on November 23, 2004, but in an Office Action mailed December 8, 2004 the Examiner refused to enter it because it "raised new issues that would require further consideration and/or search" and because it was "not deemed to place the application in better form for appeal." The Examiner noted especially the revised format and further requirements of 37 CFR 1.121.

The amendments to the application which were proposed in the paper which applicant filed on November 23, 2004 are incorporated herein, namely, amended claims 1 and 8 and the cancellation of claims 2, 3, 4, 5, 6 and 7. A new claim 9 is proposed also. The applicant's remarks which were offered on November 23, 2004 are incorporated herein as well.

An initial consideration here is the Examiner's objection to the applicant's failure in the prior amendment to meet the standards of revised 37 CFR 1.121. That objection is now believed to be met in the present amendment. Each section of the present amendment begins on a separate sheet, all of the claims are listed in ascending order in a claim listing which precedes the claims herein, and all of the proper status identifiers are believed to be shown. The applicant is grateful for the Examiner's

directions and has tried to follow them.

Some additional remarks in support of claims 1, 8 and 9 are offered here in view of the Examiner's previous reliance upon the Vargo and Jacoby et al. references.

The Vargo post protector, as stated in the Abstract of that patent, has an elongated portion which is placed adjacent to and around the lower end of a column to be protected. At the base of the column there is a flange which is disposed in an elastic membrane lying on the floor or similar supporting surface. The membrane has layers above and below the flange. The flange is not fastened to the floor but rocks instead inside the membrane. Note FIGS. 3 and 4 of the patent. When the protective column is struck, it tilts as a unit in the elastic membrane as shown in FIGS. 3 and 4. There is no flexing or bending of the walls of the column. There is a cushion inside the column near its upper extremity to soften the engagement of the column on the post, and there is no resilience at all in the walls of the column to move the walls away from the post.

It is notable, as well, that the applicant's structure protects the back side of the post; the Vargo structure does not. And it is evident that the applicant's post protector is far easier to install than Vargo's.

In the Jacoby et al. patent the posts of the storage rack which are to be protected are affixed at their lower ends to a base plate, and at that point they are joined to the plate by welds. Gusset plates are placed against the posts and are preferably welded there, according to the inventor. FIG. 2 of the patent shows the gusset plates 45

and 46 disposed contiguously to the sides of posts 30 and 31. The patent states specifically at the bottom of column 3 and the top of column 4:

“Preferably, the lower edges of the gusset plate 45, and its companion plate 46, are welded to the base plate 35, and the upper edges of the gusset plates are welded to the side flanges as illustrated in FIGS. 2 and 4.”

Summarily stated, while the gusset plates 45 and 46 in the Jacoby et al. patent “...have extensions 45c and 46c, respectively, which taper toward one another and which intersect at a welded corner 47...” (col. 3, lines 37-39) out in front of post 30 (see FIG. 2), there is no suggestion that the configuration will, should or might move the gusset plates away from post 30 when a truck fork or pallet contacts 45c or 46c, especially when the plates are welded there. The emphasis throughout the Jacoby et al. patent is to utilize the gusset plates to strengthen the base of the post where a portion has been removed, thus weakening the post itself and necessitating a reinforcement means.

Applicant's invention is clearly distinguished from the showing in the Jacoby et al. patent. The Examiner should compare applicant's FIG. 2 with the patent's FIG. 2. Applicant's post protector and the deflector portion of the gusset plates in the patent are disposed differently in relation to a post to be protected. Jacoby et al. show a deflector connected to a plate section fastened to the side of the post; applicant's leads to a bend joining it to a side portion spaced apart from the post. And they operate differently. Looking at applicant's FIG. 4, the movement of the bending elements 32 and 33, as shown by the force arrows, is neither shown nor suggested in Jacoby et al.

Nor is the movement or presence of the applicant's bending elements suggested in the Vargo patent. The resiliency of the Vargo protector is in the flexible membrane at the base of the tubular protector. That protector tilts. It does not suggest moveable walls in the tubular section. The comparison is dramatic when one compares the applicant's FIG. 4 with the Vargo patent's FIG. 4.

The above difference between the applicant's invention and the developments shown in the Vargo and Jacoby et al. patents is clearly expressed in the applicant's claims.

In claim 1, applicant calls for "resistively flexible oblique vertical bends...whereby when said barrier is deflected rearwardly said rear support portions will resiliently deflect outwardly away from the post...."

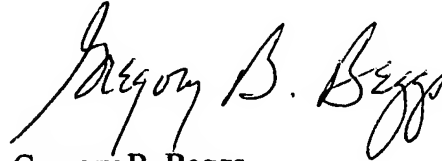
The same is true in claim 8.

In claim 9 applicant calls for "flexible bending elements in the upright segments moveable away from the post when the front vertical member is deflected toward the post...."

The cited references do not show, or even suggest, the applicant's post

protector. Applicant respectfully requests a favorable Office Action.

Respectfully submitted,

A handwritten signature in cursive script, reading "Gregory B. Beggs". The signature is written in black ink and is positioned above the printed name and contact information.

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